

REMARKS/ARGUMENTS

I. Summary of Examiner's Office Action

The Examiner did not enter the amended specification portion filed January 18, 2005 because it was not clearly designated to replace a specific paragraph or paragraphs, there was no statement as to lack of new matter pursuant 37 C.F.R. §1.125(b), and no marked-up copy of the substitute specification including whole content was supplied, pursuant to 37 C.F.R. §1.125(c).

The Examiner rejected claims 1-4 and 6-9 under 35 U.S.C. §103(a) as being unpatentable over Fletcher U.S. Patent No. 4,481,242 ("Fletcher"). The Examiner also rejected claims 1-4 and 6 under 35 U.S.C. §103(a) as being unpatentable over Kozak et al. U.S. Patent No. 6,558,079 ("Kozak et al."). The Examiner further rejected Claims 5, 10 and 11 under 35 U.S.C. §103(a) as being unpatentable over Kozak et al. in view of DeGarie U.S. Patent No. 6,357,964 ("DeGarie"). The Examiner additionally rejected Claims 7-9 under 35 U.S.C. §103(a) as being unpatentable over Kozak et al. in view of Fletcher.

II. Amendments to the Specification, Abstract and Claims

The amended specification filed January 18, 2005, which was not entered by the Examiner for the reasons stated above, is hereby withdrawn. Applicant instead submits the amendments to the specification set forth above. These amendments are based upon the specification as originally filed. The purposes of these amendments are to properly insert and/or substitute the proper headings for various sections of the specification, to appropriately place certain parts of the specification under the correct headings, and to make some minor editorial corrections. No new matter has been added by any of the above amendments.

A replacement abstract also has been set forth above. The replacement abstract presents only minor editorial changes, which are shown relative to the new abstract previously submitted on January 18, 2005.

Claims 1 and 3-11 remain in the application, with claims 1, 5-7, and 9-11 having been currently amended. Claim 2 has been canceled. The claims have been amended for clarity and to make minor editorial changes. Additionally, the limitation of canceled claim 2, that the specific gravity of the plastic is one or less, has been added to claim 1, and the spacing of the hold down means in claim 1 has been changed from "about every three feet" to "between one and five feet apart", as set forth

in the specification. Furthermore, claim 10 has been converted into an independent claim to distinguish it from the "aquatic" weed suppressor of claims 1-9, and has been amended to make clear that the transverse plastic tubes are hollow but fillable, to allow the strip of plastic to approximate the contour of a ditch upon installation.

III. Applicant's Reply to the Examiner's Rejection
of Claims 1-4 and 6-9 under 35 U.S.C. §103(a)

The Examiner has rejected claims 1-4 and 6-9 under 35 U.S.C. §103(a) as being unpatentable over Fletcher. Applicant respectfully traverses the rejection.

According to the Examiner, Fletcher discloses an aquatic weed barrier comprising a strip of plastic films having a plurality of gas release ports, which may be slits or holes, and a transverse hold down means/heavy ballast/rocks attached/positioned thereon; the strip is located longitudinally and the polymeric/plastic film has an inherent toughness for withstanding the abrasive action of water and rocks. The Examiner asserts that the dimensions and placement of Applicant's plastic strip, in order to effectively cover the area to be treated, would have been decided by an artisan with ordinary skill in the art.

As taught in claim 1 of the present application, as currently amended, Applicant's aquatic weed suppression means comprises (a) a strip of plastic having a specific gravity of one or less, and (b) a plurality of spaced apart, transverse hold down means, which are integral with or attached to the plastic strip and run substantially the entire width of the plastic strip. The fact that the hold down means are integral or attached greatly eases installation. Additionally, while the hold down means rest on the aquatic bed, the plastic strip rises above the aquatic bed between consecutively positioned hold down means, due to its low specific gravity. That causes sediment which would otherwise settle all over the surface of the plastic strip to slide down the surface of the plastic and accumulate at the hold down means, where it does not prevent the escape of decomposition gases through release ports or cause unnecessary stress on the plastic upon its removal. Furthermore, the raised sections of the plastic strip facilitate the channeling of decomposition gases to the escape ports or the openings at the edges of the plastic strip between the hold down means.

Fletcher, on the other hand, does not teach, claim, or even suggest a plurality of hold down means which are integral with or attached to, and run the width of, the plastic strip. Contrary to the Examiner's characterization of Fletcher's

disclosure as including "a transverse hold down means/heavy ballast/rocks (32, 33) attached/positioned thereon", the only "hold down means" disclosed in Fletcher are not "attached"; they are simply "heavy objects e.g. rocks" (col. 3, ln. 35). The rocks are not integral with or attached to the plastic strip, as taught and claimed in the present application, but must be placed after the strip is positioned, creating a more difficult installation. Furthermore, since Fletcher does not teach a plastic strip having a specific gravity of one or less, and since the rocks are not attached to or integral with, and do not run the width of, the plastic strip, the plastic does not rise above the aquatic bed between the rocks and cause sediment to accumulate only at a series of hold down means. Therefore, sediment can settle all over the surface of the plastic, and decomposition gases may be prevented from escaping from underneath the plastic strip.

Regardless of the ability of one with ordinary skill in the art to determine the dimensions and placement of Applicant's plastic strip, Fletcher does not teach, claim or even suggest Applicant's claimed plurality of transverse hold down means which are integral with or attached to, and run the width of, a plastic strip. Accordingly, at least for the reasons set forth above, Applicant respectfully asserts that independent claim 1

is patentable over Fletcher under 35 U.S.C. §103(a). Moreover, dependent claims 3, 4, and 6-9 depend directly from claim 1, and therefore include all limitations thereof. Applicant therefore requests that the Examiner's 35 U.S.C. §103(a) rejection be withdrawn and that claims 1, 3, 4, and 6-9 be allowed.

IV. Applicant's Reply to the Examiner's Rejection
of Claims 1-4 and 6 under 35 U.S.C. §103(a)

The Examiner has rejected claims 1-4 and 6 under 35 U.S.C. §103(a) as being unpatentable over Kozak et al. Applicant respectfully traverses the rejection.

According to the Examiner, Kozak et al. discloses a method and apparatus comprising a strip of plastic/polymeric films having an inherent toughness for withstanding the abrasive action of water and rocks, with a transverse hold down means/heavy adherent substance/ballast attached thereon. The Examiner asserts that the dimensions and positioning distance of Applicant's plastic strip, in order to effectively cover the area to be treated, would have been decided by an artisan with ordinary skill in the art. The Examiner further asserts that it would have been obvious to one of ordinary skill in the art to alter the specific gravity of the plastic to one or less and to change the manufacture material.

As stated above, the aquatic weed suppression means of claim 1 of the present application comprises (a) a strip of plastic having a specific gravity of one or less, and (b) a plurality of spaced apart, transverse hold down means, which are integral with or attached to the plastic strip and run substantially the entire width of the plastic strip. The Examiner refers to Kozak et al. disclosing "a transverse hold down means/heavy adherent substance/ballast", which is presumed to be held by the Examiner as the equivalent of Applicant's integral or attached hold down means. However, the ballast referred to in Kozak et al. "is most preferably a dense soil or clay mixture", and may take alternative forms such as "sand (wet or dry), gravel, pebbles, wood chips, or asphalt" (col. 8, lns. 5-8). The ballast is not integral with or attached to a plastic strip, as in the present invention, but instead must be "capable of being stored and deployed from deployer 108 and preferably is a material that may be stored within hopper 170 and dispensed by auger 172" (col. 8, lns. 3-5). Such ballast is a far cry from Applicant's hold down means, and does not fit any portion of the parameters thereof: the ballast cannot be said to be "a plurality", is not integral with or attached to the strip of plastic, and is not spaced apart. In fact, nowhere does Kozak et al. teach, claim or suggest Applicant's claimed plurality of

transverse hold down means which are integral with or attached to, and run the width of, a plastic strip.

Nor does Kozak et al. teach, claim or suggest Applicant's claimed strip of plastic having a specific gravity of one or less. The Examiner's assertion that it would have been obvious to one of ordinary skill in the art to alter the specific gravity of the plastic in Kozak et al. to one or less has no basis, and the Examiner does not give any objective reason that anyone would do so. Instead, it is particularly non-obvious to lower the specific gravity of the plastic in Kozak et al., since, unlike in Applicant's invention, there is no desire to prevent sediment from settling on top of the plastic strip; in Kozak et al., soil and/or similar materials are intentionally placed on top of the plastic. Whereas in the present application, the plastic is designed to float above the aquatic bed, in Kozak et al, the plastic must be held down atop a section of landfill. No one, not even a person of ordinary skill in the art, would have thought it obvious to decrease the specific gravity of the plastic in Kozak et al. to one or below, since it would be contrary to the stated purpose of the invention.

Kozak et al. does not teach, claim or even suggest Applicant's claimed plurality of transverse hold down means

which are integral with or attached to, and run the width of, a plastic strip, nor does it teach, claim or suggest Applicant's plastic strip having a specific gravity of one or less. It also would not have been obvious to one of ordinary skill in the art to lower the specific gravity of the plastic strip in Kozak et al. to one or less. Accordingly, at least for the reasons set forth above, Applicant respectfully asserts that independent claim 1 is patentable over Kozak et al. under 35 U.S.C. §103(a). Moreover, dependent claims 3, 4, and 6 depend directly from claim 1, and therefore include all limitations thereof. Applicant therefore requests that the Examiner's 35 U.S.C. §103(a) rejection be withdrawn and that claims 1, 3, 4, and 6 be allowed.

V. Applicant's Reply to the Examiner's Rejection
of Claims 5, 10 and 11 under 35 U.S.C. §103(a)

The Examiner has rejected claims 5, 10 and 11 under 35 U.S.C. §103(a) as being unpatentable over Kozak et al. in view of DeGarie. Applicant respectfully traverses the rejection.

According to the Examiner, DeGarie discloses a drainage system with a membrane cover having a plurality of tubular-shaped weights to hold it down. The Examiner asserts that in view of DeGarie, it would have been obvious to one of ordinary

skill in the art to replace the hold down means with tubular-shaped weights.

First addressing the Examiner's rejection of claim 5, Applicant notes that the weight lines in DeGarie are not integral with or attached to the membrane. The weight lines instead are anchored to the perimeter walls of the reservoir on which the membrane sits, and move with respect to the membrane. DeGarie does not, however, teach, claim or even suggest Applicant's claimed plurality of transverse hold down means which are integral with or attached to, and run the width of, a plastic strip, which greatly ease installation of Applicant's invention and cause sediment to settle where desired. DeGarie does not, therefore, cure the failure of Kozak et al. to teach, claim or even suggest Applicant's claimed plurality of transverse hold down means which are integral with or attached to, and run the width of, a plastic strip. Nor does DeGarie cure the failure of Kozak et al. to teach, claim or even suggest a plastic strip having a specific gravity of one or less.

Turning to the Examiner's rejection of claims 10 and 11, it should be noted that Applicant's claim 10, as amended, is an independent claim, and claim 11 depends from claim 10. As taught in claim 10, Applicant's weed suppression means comprises (a) a strip of plastic; and (b) a plurality of transverse,

flexible, hollow plastic tubes attached along the width of the plastic strip, which may be filled with a material that will hold the plastic strip in close proximity to the contour of a ditch. As discussed above, nothing in Kozak et al. teaches, claims, or even suggests hold down means which are attached to a plastic strip, let alone ones which are comprised of flexible, hollow plastic tubes. Although DeGarie does disclose tubular-shaped weights, they also are not attached to a plastic strip. Furthermore, DeGarie does not teach, claim or even suggest flexible, hollow tubes which are fillable to hold the plastic strip to the particular contours of a ditch.

DeGarie does not cure the failure of Kozak et al. to teach, claim or even suggest Applicant's claimed plastic strip having a specific gravity of one or less, nor does DeGarie cure Kozak et al.'s failure to teach, claim or even suggest a plurality of transverse hold down means which are integral with or attached to, and run the width of, a plastic strip. Accordingly, since Claim 5 is dependent from claim 1, and at least for the reasons set forth in Section IV above claim 1 is patentable over Kozak et al. under 35 U.S.C. §103(a), Applicant respectfully asserts that claim 5 is patentable over Kozak et al. in view of DeGarie under 35 U.S.C. §103(a). Furthermore, neither Kozak et al. nor DeGarie teaches, claims or even suggests hold down means which

are attached to a plastic strip or flexible, hollow tubes which are fillable to hold the plastic strip to the contours of a ditch. Accordingly, at least for the reasons set forth above, Applicant respectfully asserts that independent claim 10 is patentable over Kozak et al. in view of DeGarie under 35 U.S.C. §103(a). Moreover, dependent claim 11 depends directly from claim 10, and therefore includes all limitations thereof. Applicant therefore requests that the Examiner's 35 U.S.C. §103(a) rejection be withdrawn and that claims 5, 10 and 11 be allowed.

VI. Applicant's Reply to the Examiner's Rejection
of Claims 7-9 under 35 U.S.C. §103(a)

The Examiner has rejected claims 7-9 under 35 U.S.C. §103(a) as being unpatentable over Kozak et al. in view of Fletcher. Applicant respectfully traverses the rejection.

According to the Examiner, Fletcher discloses an aquatic weed barrier comprising a strip of plastic films having a plurality of gas release ports, and it would have been obvious to one of ordinary skill in the art to modify the plastic/polymeric liner cover of Kozak et al. by placing it on the channel of an irrigation ditch and providing a plurality of gas release holes/slits thereon. The Examiner also asserts that it would have been obvious to one of ordinary skill in the art to

alter the specific gravity of the plastic to one or less and to change the manufacture material.

Claims 7-9 depend from claim 1, and therefore include all limitations thereof. Regardless of any teachings by Fletcher to include a plurality of gas release ports on a strip of plastic films, that does not cure the failure of either Fletcher or Kozak et al., as discussed above, to teach, claim or even suggest Applicant's claimed plurality of transverse hold down means which are integral with or attached to, and run the width of, a plastic strip, or Applicant's plastic strip having a specific gravity of one or less. Furthermore, as discussed in Section IV above, it would not have been obvious to one of ordinary skill in the art to lower the specific gravity of the plastic strip in Kozak et al. to one or less. Accordingly, at least for the reasons set forth above, Applicant respectfully asserts that claims 7-9 are patentable over Kozak et al. in view of Fletcher under 35 U.S.C. §103(a). Applicant therefore requests that the Examiner's 35 U.S.C. §103(a) rejection be withdrawn and that claims 7-9 be allowed.

VII. Conclusion

Applicant respectfully submits that claims 1 and 3-11 which remain in the application are in condition for allowance and, therefore, that this application is in condition for allowance. Reconsideration and allowance of the application are respectfully requested.

Respectfully submitted,



Warren J. Grosjean
32 Juniper Road
Wayne, New Jersey 07470
Tel.: (973) 839-6383